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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4358 of 2007
Date of decision: 24.9.2007

Sandeep **...Petitioner**

Versus

Election Tribunal, Karnal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Rakesh Chauhan, Advocate for the petitioner.

Mr. Arun Jain, Advocate for respondents No. 2 to 7.

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RAJESH BINDAL, J.

Challenge in the present petition, is to the order dated August 23, 2007 passed by the Additional Civil Judge (Senior Division), Karnal exercising the powers as Election Tribunal.

Briefly the facts, as noticed in the impugned order, are that the election of Sarpanch of village Uncha Samana (District Karnal) was held on April 03, 2005. Petitioner alongwith six other candidates contested for the post of Sarpanch. Total 2329 number of votes were polled, out of which 185 votes were declared invalid and balance 2144 votes were found to be valid. The number of votes secured by the petitioner as well as other candidates are as under:-

Sandeep (Petitioner)	612
Sukhram Pal (Respondent No.2)	588
Viru (Respondent No.3)	272
Birbal (Respondent No.4)	151
Vikram (Respondent No.5)	25
Sanjiv (Respondent No.6)	478
Harpal (Respondent No.7)	18

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Respondent No.2 filed election petition against the petitioner raising various pleas regarding irregularities and illegalities committed during the course of election and also the counting. It was further alleged that the authorities colluded with the petitioner. The seal for putting mark against a particular symbol was not made available for quite some time especially to the women voters. Due to which police officials made them to thumb mark on the symbol. It had happened on Booth No. 96 where 37 votes of the respondent no.2 were declared invalid having thumb impression on the symbol of the respondent no.2. It is further alleged that ballot papers taken by the polling officials with thumb impression were folded in such a way that impression of the thumb mark/seal came on the other side and at the time of counting those ballots were declared invalid. Still further the allegations are that infact after the counting at about 5.30 P.M., respondent no.2 was declared elected by margin of 12 votes and after the respondent no.2 and his agents left the polling station and were celebrating the victory, some one informed that the petitioner has been declared elected by 24 votes. The efforts of respondent no.2 to lodge a complaint against this to the authorities remained fruitless.

The trial in the election petition continued for quite some time and even the evidence of the parties was also recorded. However, during the course of trial, the respondent no.2 made a statement on August 18, 2007 giving up grounds of mal/corrupt practices under Section 176 (4) (a) of the Haryana Panchayati Raj Act, 1994 (for short 'the Act") and confined his claim only for re-counting of votes in terms of Section 176 (4) (b) of the Act. To substantiate his plea, learned counsel for respondent no.2 relied upon various authorities before the Tribunal, namely, **Radha Kishan Vs. Election Tribunal-cum-Sub Judge, Hisar 2000 HRR 328, Chandrika Prasad Yadav Vs. State of Bihar & others 2004(3) JR (SC) 624 (P&H), Azad Singh son of Chhotu Ram Vs. Azad Singh son of Randhir Singh 1995 PLJ 526 (P&H), Kailash Bai alias Kailash Rani Vs. Additional Civil Judge (Sr. Division), Tihana and others 2004 (3) RCR (Civil) 740**

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(DB P & H) and Gurtej Singh Vs. Darbara Singh 2000 HRR 372 (P&H).

On going through the material on record, it was found that there was suspicion in the entire process of counting of votes and declaration of result as the evidence led by the petitioner/respondent no.2 was self-contradictory. Learned Tribunal while accepting the prayer made by respondent no.2 directed for recounting of votes on August 28, 2007, vide impugned order dated August 23, 2007.

On notice of motion having been issued, Mr. Arun Jain, learned counsel appearing on behalf of respondents no. 2, petitioner before the Tribunal, who was present in Court accepted notice and requested for hearing of the petition finally.

Both the counsels for the parties have been heard at length for final disposal of the present petition.

Shri Ashok Aggarwal, learned Senior Counsel, appearing for the petitioner vehemently argued that once respondent no. 2 had given up his ground of mal/corrupt practices, nothing remained in his election petition as even for recount of votes those very allegations were being relied upon. There are no allegations in the petition filed by respondent no.2 about the mal/corrupt practices adopted in the counting of votes. Only allegations are that there was connivance of the officials with the petitioner in the process of polling. He further referred to an order passed by the Tribunal on August 28, 2006 whereby application filed by the present petitioner under Order 1 Rule 10 of the Code of Civil Procedure for impleading the Returning Officer, against whom the allegations had been made in the petition, was dismissed holding him to be not a necessary party. Still further while relying upon the judgments, namely, **Subhash Chand Vs. Ramesh Kumari and another 2006(2) R.C.R. (Civil) 777, Chandrika Prasad Yadav Vs. State of Bihar and others (2004) 6 Supreme Court Cases 331, M.Chinnasamy Vs. K.C. Palanisamy and others (2004) 6 Supreme Court Cases 341, Gurusewak Singh Vs. Avtar Singh and others (2006) 4 Supreme Court Cases 542, and Radha Kishan Vs. The**

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Election Tribunal-cum-Sub Judge, Hisar **1999 (4) RCR (Civil) 79,** he submitted that recount of votes cannot be ordered just on the asking. The allegations have to be definite, containing unambiguous details and supported by documents, if any.

He further submitted that in terms of Rule 69 (2) of the Haryana Panchayati Raj Election Rules, 1994 (for short 'the Rules"), it was incumbent upon the respondent No.2 to have raised an objection immediately after declaration of the result in case he wanted recount of votes. The same having not been done at the spot, without there being valid explanation coming on record in the election petition, the respondent no. 2 could not be permitted to state that there was some bungling in the counting of votes and accordingly, there should be recount of votes. Pleadings of material irregularities in counting of votes is one of the essential condition which is lacking in the present case. Summing up his arguments, learned counsel for the petitioner prayed that if the order passed by the Tribunal is examined in the light of the settled position of law, the same cannot be sustained and is liable to be set aside.

On the other hand, Shri Arun Jain, Advocate learned counsel appearing for respondent no. 2, who had filed election petition before the Tribunal, controverted the contentions raised by learned counsel for the petitioner. He, relying upon the judgment of Full Bench of this Court in Radha Krshan' case (supra), submitted that all what had to be done by the Tribunal to order recount is to record a prima-facie satisfaction about the discrepancies. He further submitted that facts in the present case are glaring and speak for themselves. During the course of evidence in the election petition, it came on record that the allegations made by respondent no.2 were found to be correct to the effect that infact the Presiding Officer was there till 10.00 P.M. when he had declared the present petitioner as elected changing the result, which was declared by him at 5.30 P.M. when respondent no.2 had been declared as elected. In his evidence Gurnam Singh, Presiding Officer (RW1) admitted that he declared the result at 5.30 P.M. and had left the Polling Station at about 5.45 PM. However, as per the

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statement made by the petitioner, the Presiding Officer remained present there till about 10.00-11.00 P.M. According to the petitioner this itself depicted that there was some hanky panky going on as the evidence clearly established that stand taken by the petitioner was not correct. He further submitted that with this evidence on record, even the allegations made by respondent no.2 regarding declaration of result at 5.30 P.M. and change thereof at 10.00 P.M. stood substantiated. He further submitted that another glaring fact which had bearing on the decision of the Tribunal order recount of votes was that out of total 2329 votes polled, 185 votes were declared invalid, which was a substantial figure. As far as the raising of objection at the spot, in terms of Rule 69 (2) of the Rules is concerned, he submitted that there was no occasion for respondent no. 2 to have raised the objection at the spot as when the result was declared at 5.30 P.M. he was declared elected and when petitioner was declared elected at about 10.30 P.M., it was at the back of respondent no. 2. He being not present on the spot could not possibly raise the objection. However, thereafter respondent no. 2 met District Election Officer as well as other authorities to lodge the report but none entertained him and ultimately he had no other choice but to file an Election Petition. Summing up his arguments, he submitted that this is a fit case in which the Tribunal has rightly ordered the recount of votes which in any case is not going to prejudice the interest of the petitioner as whosoever has secured more votes will be declared winner and petitioner should not be afraid of recounting in case he had not indulged in manipulation during counting of votes.

In Radha Kishan's case (supra) Full Bench of this Court held as under:-

> "22. The use of the word "shall" in our view is not without a purpose. The legislative purpose behind the provisions of sub-section 4 (b) is to provide an expeditious disposal and relief to the candidate whose case falls within the limited scope of the grounds spelled out in the Section itself. To us it appears that the cases falling within the

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limited ambit and scope of section 176 (4) (b) and not falling under sub-clause (a) of the same sub-section, it may not be necessary for the Court to hold a regular inquiry as postulated under the provisions of sub-section 4 (a) of the Act. The validity of the election is to be in dispute but only between two or more candidates. Upon being *prima facie* satisfied, it may be somewhat obligatory upon the Court of competent jurisdiction to order scrutiny and computation of votes recorded in favour of each candidate upon passing such an order, the candidate who is found to have recorded the largest number of valid votes in his favour would be duly elected. The restricted and narrow scope of the cases falling under this category and application of these provisions thereto clearly indicate with definite clarity by the legislature in the language of these provisions.

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43. The cumulative effect of the above discussion persuades us to settle the legal controversy in relation to the nature and scope of section 176(4) (b) of the Act as under:-

> "With respect and for the reasons recorded above, we are not quite in agreement with either of the extreme views taken by the Hon'ble Division Benches of this Court in the cases of Sunehri Devi Vs. Narain Dev, C.W.P. No.6381 of 1995, decided on 20.10.1995 and Bharat Singh Vs. Dalip Singh and others, C.W.P. No.9671 of 1995 decided on 6.10.1995. We would prefer to adopt the middle path and practical oriented approached so as to achieve the purpose of the Act. The scrutiny and computation by recount of votes arises in such election more than often. Such request *de hors* of

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the corrupt practices or other allegations *prima facie* may justify passing of an order within the scope of section 176 (4) (b) of the Act. The legislative intent requiring expeditious disposal of a petition and passing of an order of scrutiny and computation without detailed in inquiry is explicit in the language of these provisions. Without placing unnecessary emphasis on the language of the Section and to make the law susceptible to the situations likely to arise in the cases to which such provisions are applicable and with intention to obstracise the possibility of confusion we would interpret the Section on its cumulative reading and in synthesis with the scheme of the Act.

44. Ergo we hold that recounting of votes in such an election cannot be directed on more asking and in a routine manner. The applicant, if makes definite averments on verification supported by unambiguous details, in accordance with law, supported by documents, if any, and where the applicant makes out a *prima facie* case to the satisfaction of the court, nothing prevents the Court from ordering scrutiny and computation of votes on recount in the case falling within restricted scope of section 176 (4) (b) of the Act. In other words, the court would not be justified in declining such a relief for the reason that the applicant, irrespective of above, must lead evidence through detailed enquiry. Such detailed enquiry is neither postulated nor would be necessary within the purview of said provisions in the limited cases afore-referred.

Resultantly both the writ petitions are dismissed without any order as to costs.

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Hon'ble the Supreme Court in Baldev Singh's case (supra) held that the recount of votes should not be ordered as a matter of course unless certain conditions exist, which justified such an order. In Chandrika Prasad Yadav's case (supra) Hon'ble the Supreme Court held that order of recount of votes can be passed when the following conditions are fulfilled, namely:-

"(i) a prima facie case;

(ii) pleading of material facts stated irregularities in counting of votes;

(iii) a roving and fishing inquiry shall not be made while directing re-counting of votes; and

(iv) an objection to the said effect has been taken recourse to."

The judgment of the Full Bench in Radha Kishan's case was followed by this Court in Subhash Chand's case (Supra).

In view of the pleadings of the parties and material placed on record by them and the law laid down by Hon'ble the Supreme Court as referred to above, it is found that a prima facie case is made out for recounting of votes. It is not a case where merely fishing enquiry was being made. The glaring facts which emerged from the evidence led by the parties, which confirmed the contention of the respondents are that even though the result was stated to be declared at 5.30 P.M. and the Presiding Officer had gone but still the statement made by the respondent that infact after declaration of the result at 5.30 P.M., the same was changed at about 10.00 P.M. was supported with the statement of the petitioner that the Presiding Officer remained there till 10.00 P.M. This Court is not opining finally on the issue as to whether the presiding Officer factually remained at the spot till 10.00 P.M. or as to whether the result was tampered with or not. However, still keeping these facts in view and also another fact that out of total 2329 votes polled substantial number of 185 votes were declared to be invalid, I find that no illegality has been committed by the Tribunal while directing the recounting of votes polled in the election.

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Accordingly, the revision petition is dismissed. The Tribunal may now fix a date for recount of votes after intimating both the parties.

September 24, 2007 **(Rajesh Bindal)**
Pka **Judge**

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